

RECORDATION NO. 3308-A Filed & Recorded

MAR 18 1977-9 25 AM

INTERSTATE COMMERCE COMMISSION

AMENDED AND RESTATED

CONDITIONAL SALE AGREEMENT

Dated as of February 1, 1977,

between

UNITED STATES TRUST COMPANY OF NEW YORK, as Agent,

and

THE PITTSBURG & SHAWMUT RAILROAD COMPANY

AMENDED AND RESTATED
CONDITIONAL SALE AGREEMENT
DATED AS OF FEBRUARY 1, 1977

AGREEMENT dated as of February 1, 1977, between UNITED STATES TRUST COMPANY OF NEW YORK, a New York corporation, as Agent (hereinafter called the Agent), under a Finance Agreement dated as of February 1, 1977, and THE PITTSBURG & SHAWMUT RAILROAD COMPANY, a Pennsylvania corporation (hereinafter called the Railroad).

WHEREAS Bethlehem Steel Corporation (hereinafter called the Builder) has constructed, sold and delivered to the Railroad, and the Railroad has purchased, pursuant to an Article of Agreement dated as of March 1, 1976 (hereinafter called the Original Conditional Sale Agreement) between the Builder and the Railroad, the equipment described in Schedule B hereto (hereinafter called the Equipment); and

WHEREAS the Builder has assigned certain of its rights and interests under the Original Conditional Sale Agreement (including its title to the Equipment) to Mellon Bank, N.A. (hereinafter called Mellon), pursuant to an Agreement and Assignment dated as of March 1, 1976 (hereinafter called the Original Assignment), between Mellon and the Builder; and

WHEREAS Mellon is assigning all of its right, title and interest to the Equipment and in the Original Conditional Sale Agreement to United States Trust Company of New York, as Agent, pursuant to a Supplemental Assignment dated as of the date hereof; and

WHEREAS the Original Conditional Sale Agreement and the Original Assignment were filed pursuant to Section 20c of the Interstate Commerce Act on April 29, 1976 (Recordation No. 8308).

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree to and do hereby amend and restate all of the provisions of Sections 1 through 24 of the the Original Conditional Sale Agreement to read as set forth in Articles 1 through 23 hereof, as follows:

ARTICLE 1. Assignment; Definitions. The term "Vendor", whenever used in this Agreement, means, before any assignment of its rights hereunder, the corporation named in Item 1 of Schedule A hereto and any successor or successors for the time being to its manufacturing properties and business, and after such assignment, both any assignee (or successor thereto) for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment or which are not vested in any assignee or assignees until satisfaction of conditions contained in such assignment. The term "Builder", whenever used in this Agreement, means, both before and after any assignment of its rights hereunder, the corporation named in Item 1 of Schedule A hereto and any successor or successors for the time being to its manufacturing properties and businesses.

ARTICLE 2. Construction and Sale. The Builder undertakes and agrees to sell and deliver to the Railroad one hundred (100) Open Top 100-Ton Triple Hopper Cars (hereinafter called the Equipment) f.o.b. at the Plant of the Builder at Johnstown, Pennsylvania, and the Railroad shall accept delivery of and purchase the Equipment, subject to each and all of the terms and conditions of this Agreement. The Equipment shall conform to the Builder Specification dated March 1, 1976, and letters from the Builder to the Railroad dated November 4, 1975, November 10, 1975, and January 22, 1976 (hereinafter collectively referred to as the "Specifications" and incorporated herein by reference thereto), and shall be subject to final inspection and acceptance by the Railroad before releasing from the aforesaid place of delivery.

ARTICLE 3. Inspection and Delivery. The Builder shall give the Railroad full opportunity to inspect the Equipment during the building thereof at the plant where such building is being done. On completion of each unit of the Equipment, the Railroad shall arrange for final inspection and acceptance thereof at said plant and shall have its agent execute and deliver to Vendor in duplicate a Certificate of Acceptance covering all the Equipment found to be complete in accordance with the Specifications. Subject to the provisions of Article 14 hereof, each such Certificate with respect to the Equipment covered thereby shall be final and conclusive evidence that such Equipment conforms in workmanship, material, construction and in all respects to the requirements and provisions of this Agreement and the Specifications and has been accepted on behalf of the Railroad.

The Builder shall deliver the Equipment at the place of delivery, ready for service and free of all liens and encumbrances and free of any claims of any nature by or in favor of any person or party claiming from, through or under the Builder, and subject only to the reservation of title thereto by Vendor in accordance with the provisions hereof. Delivery of Equipment shall be commenced on or after April 30, 1976, and shall be completed on or before June 30, 1976, or such later date as Vendor and the Railroad shall mutually agree upon, subject to delays due to labor troubles, fires, floods, explosions or other accidents, or delays of carriers or of subcontractors, or in receipt of materials, governmental restrictions or any other cause or causes (whether or not of the same general character as those herein specifically enumerated) beyond the Builder's reasonable control.

ARTICLE 4. Purchase Price and Payment. The Railroad shall pay Vendor as the purchase price (hereinafter called the Purchase Price) for each unit of Equipment the sum of Twenty-seven thousand nine hundred Dollars (\$27,900) making the aggregate Purchase Price Two million seven hundred ninety thousand Dollars (\$2,790,000) for the Equipment. Said Purchase Price shall be payable to the Vendor, as follows:

Upon delivery to the Railroad and its acceptance at the point of delivery above stated of the Equipment, the sum of Two hundred ninety thousand Dollars (\$290,000) as a down payment on account of the Purchase Price of the Equipment.

The balance of the Purchase Price in the sum of Two million five hundred thousand Dollars (\$2,500,000) shall be payable as follows: (A) \$125,000 thereof in two quarterly instalments of Sixty-two thousand five hundred Dollars (\$62,500) each, payable on October 1, 1976, and January 1, 1977, and (B) \$2,375,000 thereof in 28 consecutive equal (except for appropriate adjustment of the final instalment in case the amount payable pursuant to this subparagraph (B) shall not, when divided by 28, result in an amount ending in an integral cent) semiannual instalments, payable on March 1 and September 1 in each year commencing September 1, 1977, to and including March 1, 1991 (the aggregate of the instalments referred to in subparagraphs (A) and (B) of this paragraph hereinafter called the Conditional Sale Indebtedness).

Interest (i) at a rate per annum (based on a year of 365 or 366 days, as the case may be) equal to 1% above the prime rate of interest of Mellon Bank, N.A., on new 90-day loans to commercial borrowers of substantial size and highest credit standing in effect at said Bank from time to time, such interest rate to change automatically from time to time effective as of the effective date of each change in such prime rate, shall apply to and be payable on the Conditional Sale Indebtedness remaining unpaid from time to time, and shall begin to accrue from the date the Equipment is delivered to and accepted by the Railroad, or, if this agreement is assigned by the Builder as provided, from the date the assignee of the Builder pays the Builder an amount equal to the balance of the Purchase Price of the Equipment so delivered and accepted, payable quarterly on October 1, 1976, January 1, 1977, and on the Closing Date (hereinafter called the Closing Date), as defined in the Supplemental Assignment dated as of February 1, 1977, between Mellon Bank, N.A., and United States Trust Company of New York, in the event such Closing Date occurs after March 1, 1977, and thereafter (ii) at the rate of 9% per annum on the unpaid portion of the Conditional Sale Indebtedness, such interest to be payable, to the extent accrued, on March 1 and September 1 in each year, commencing September 1, 1977.

All interest payable under clause (ii) of the next preceding subparagraph shall be calculated on the basis of a 360-day year of twelve 30-day months.

If any date for payment of principal or interest is not a business day, the payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, are authorized or obligated to remain closed.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 10% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 8 hereof, the Railroad shall not have the privilege of prepaying any instalment of its indebtedness hereunder prior to the date it becomes due.

In the event the Vendor, pursuant to Article 15 hereof, assigns the right to receive the payments herein provided to be made by the Railroad, the assignee thereof may request the Railroad to make and the Railroad shall make such payments to it at such address as shall be supplied to the Railroad by the assignee.

ARTICLE 5. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which impositions the Railroad assumes and agrees to pay on demand. The Railroad will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its interest therein and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title or interests of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the title or the interests or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Railroad shall have approved the payment thereof.

ARTICLE 6. Title to the Equipment. The Vendor shall and hereby does retain its title and interests in the Equipment until the Railroad shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 8 hereof, when and only when the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Railroad at that time, will (a) execute a bill or bills of sale for the Equipment transferring and releasing its title to and interests therein to the Railroad, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred to in Article 21 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records such transfer and release and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Railroad.

ARTICLE 7. Marking of the Equipment. The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule B hereto, or in the case of Equipment not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c", or other appropriate markings approved by the Vendor with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's title and interests in the Equipment and its rights under this Agreement. The Equipment may contain such other data and information as shall be requested by the Railroad not inconsistent with restrictions set forth in this Article. The Railroad will not place any such unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. The Railroad will not change the number of any unit of the Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Railroad will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

ARTICLE 8. Casualty Occurrences. In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such

occurrences being hereinafter called Casualty Occurrences), the Railroad shall promptly and fully inform the Vendor in regard thereto (after it has knowledge of such Casualty Occurrence). When the aggregate Casualty Value (as defined herein) of all units having suffered a Casualty Occurrence under this Agreement and the Conditional Sale Agreement referred to in Schedule A hereto (hereinafter called the Other Agreement) (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 8 and Article 8 of the Other Agreement) shall exceed \$25,000, the Railroad, within 30 days after it has knowledge of such event, shall promptly pay to the Vendor a sum equal to the aggregate Casualty Value of such units of the Equipment as of the date of such payment and shall file with the Vendor a certificate of an officer of the Railroad setting forth the Casualty Value of each unit of the Equipment suffering a Casualty Occurrence. All such moneys paid to the Vendor shall be held as additional security for the obligations of the Railroad under this Agreement unless and until they are applied as expressly provided in this Agreement.

So long as no event of default shall have occurred and be continuing, any money paid to the Vendor pursuant to the preceding paragraph of this Article 8 shall, as the Railroad may direct in a written instrument filed with the Vendor be applied, in whole or in part, to prepay instalments of Conditional Sale Indebtedness or, in whole or in part, toward the cost of a unit or units of standard gauge railroad equipment (other than passenger or work equipment, locomotives or cabooses) first put into service no earlier than the date of this Agreement, to replace units suffering a Casualty Occurrence. In case any money is applied pursuant to this Article 8 to prepay indebtedness, it shall be so applied to reduce each instalment of Conditional Sale Indebtedness thereafter falling due pro rata.

The Casualty Value of each unit of the Equipment (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to the original Purchase

Price thereof as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the original Conditional Sale Indebtedness. The Casualty Value of each replacement unit shall be deemed to be that amount which bears the same ratio to the portion of the cost thereof paid by the Vendor as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the unpaid Conditional Sale Indebtedness (without giving effect to any such prepayments) as of the date of acquisition by the Vendor of such replacement unit.

The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement; provided, however, that nothing herein shall result in the Builder having any liability or obligation with respect to any replacement unit or units not manufactured by it. Title to all such replacement units shall be free and clear of all liens and encumbrances except the liens permitted by the second paragraph of Article 12 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement and to protect the title and interests of the Vendor to such replacement units. All such replacement units shall be guaranteed and warranted in like manner as is customary at the time for similar equipment.

Whenever the Railroad shall file with the Vendor a written direction to apply amounts toward the cost of any replacement unit or units, the Railroad shall file therewith:

- (1) a certificate of a Vice President, an Assistant Vice President, or the Controller or Chief Account-

ing Officer of the Railroad certifying that such replacement unit is standard gauge railroad equipment (other than work or passenger equipment, locomotives or cabooses) first put into service no earlier than the date of this Agreement, and has been marked as required by the provisions of this Article 8 and certifying, in the event such replacement unit is new equipment, the cost of such replacement unit and, in the event such replacement unit shall be equipment theretofore used in railroad service, that the cost thereof to the Vendor does not exceed the lesser of the fair value thereof and the original cost thereof less depreciation at a rate equal to 1/15 of such original cost for each year in service and such replacement equipment has a remaining useful life at least as long as that which the Equipment being replaced would have had, but for the Casualty Occurrence; and

(2) a bill of sale to the Vendor for such unit or units and an appropriate supplement to this Agreement evidencing the subjections of such unit or units to all of the provisions hereof; and

(3) an opinion of counsel for the Railroad that security title to such replacement unit or units is vested in the Vendor, free and clear from all claims, liens, security interests and other encumbrances except the rights of the Railroad under this Agreement, that such unit has come under and become subject to this Agreement, and that the filings and recordings referred to in Article 19 hereof have been effected.

So long as no event of default shall have occurred and be continuing, any money paid to the Vendor pursuant to this Article 8 shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in such of the following as may be specified in such written direction: (i) direct obligations of the United States of America or obligations for which the full faith and credit of the United States is pledged to provide for the payment of principal and interest, (ii) open market commercial paper rated A-1 by Standard & Poor's Corporation or prime-1 or better by NCO/Moody's Commercial Paper Division of Moody's Investors Service, Inc., or the successor of either of them, or (iii) certificates of deposit of or

bankers' acceptances accepted by, domestic banks in the United States of America having capital and surplus in excess of \$100,000,000, in each case maturing in not more than one year from the date of such investment (such investments being hereinafter called Investments). Any such obligations may from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in writing direct. Any interest received by the Vendor on any Investments shall be held by the Vendor and applied as hereinafter provided. Upon any sale or the maturity of any Investments, the proceeds thereof, plus any interest received by the Vendor thereon, up to the cost (including accrued interest) thereof, shall be held by the Vendor for application pursuant to this Article 8, and any excess shall be paid to the Railroad. If such proceeds (plus such interest) shall be less than such cost, the Railroad will promptly pay to the Vendor an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Vendor in connection with the purchase and sale of Investments.

If one or more events of default shall have occurred and be continuing, all money held by the Vendor pursuant to this Article 8 (including, for this purpose, Investments) shall be applied by the Vendor as if such money were money received upon the sale of Equipment pursuant to Article 17 hereof.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, the Vendor shall, upon request of the Railroad, after payment by the Railroad of a sum equal to the Casualty Value of such Equipment, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

ARTICLE 9. Maintenance; Compliance with Laws and Rules; Covenants. The Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense.

During the term of this Agreement, the Railroad will at all times comply in all respects with all laws of

the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

The Railroad agrees that it will not declare any dividends (other than the dividends payable solely in stock of the Railroad) on any class of its stock or make any payment on account of the purchase, redemption or other retirement of any shares of such stock or make any distribution in respect thereof, either directly or indirectly; repay the principal amount payable by the Railroad to Pittsburgh & Shawmut Coal Company pursuant to the noninterest bearing notes outstanding on September 30, 1976, in the aggregate amount of \$925,000; repay the principal amount outstanding on any notes, loans, or other indebtedness payable by the Railroad to any Affiliate (as hereinafter defined) incurred outside the ordinary course of the Railroad's railroad business; or make any investments (other than Investments as defined in Article 8 hereof) loans or guaranties outside the ordinary course of the Railroad's railroad business; provided that, the Railroad may make such declarations, payments, distributions, repayments, investments, loans and guaranties (collectively referred to as Payments) so long as no event of default, or event which with the lapse of time and/or demand could constitute such an event of default, shall have occurred and so long as the aggregate total of Payments shall not exceed the sum of:

(1) \$250,000; plus

(2) 75% of the aggregate consolidated net income of the Railroad for each full calendar year subsequent to December 31, 1976, taken as one accounting period and determined in accordance with generally accepted accounting principles.

For purposes of this Article, the term Affiliate shall mean, in addition to the Pittsburgh & Shawmut Coal Company, any corporation, company, trust, individual or other entity directly or indirectly controlling or controlled by the Railroad or under direct or indirect common control with the Railroad. For the purposes of this Article, any loans, advances or other indebtedness made to the Railroad by any Affiliate and any indebtedness (consisting of principal and interest) represented by the Railroad's presently outstanding First Mortgage or General Mortgage Bonds, or any refunding thereof, shall be deemed to be indebtedness incurred by the Railroad within the ordinary course of the Railroad's railroad business provided, that, any such loans, advances or other indebtedness are not in the form of, or are not intended to be, long-term indebtedness or contributions to capital.

The Railroad agrees that, prior to March 1, 1977, Pittsburgh & Shawmut Coal Company, and any Affiliate which holds a note, loan or other indebtedness of the Railroad incurred outside of the ordinary course of the Railroad's railroad business, will execute and deliver to the Vendor a subordination agreement substantially in the form of the agreement attached hereto as Schedule C. The Railroad shall furnish a certificate to the Vendor prior to March 1, 1977, setting forth the payees and amounts of all such notes, loans and indebtedness, together with an opinion of counsel that any such subordination agreement has been duly authorized, executed and delivered by the party executing the same.

The Railroad agrees it will not discharge or release or dispose of any note, loan or other indebtedness payable by any Affiliate to it for less than full consideration.

ARTICLE 10. Reports and Inspections. On or before March 31 in each year, commencing with the calendar year which begins after the expiration of 120 days from the date of this Agreement, the Railroad shall furnish to the Vendor an accurate statement signed by an officer of the Railroad (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request, (b) stating that, in the case of all Equipment

repaired or repainted during the period covered by such statement, the numbers and markings required by Article 7 hereof have been preserved or replaced, (c) certifying that the Railroad is not in default under any provision of this Agreement and (d) certifying and/or providing calculations setting forth the Railroad's compliance with the covenants contained in the third paragraph of Article 9 hereof. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 11. Possession and Use. The Railroad, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled to the possession of the Equipment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with others and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Railroad, or over which it has trackage rights, or upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, from and after delivery of the Equipment by the Builder to the Railroad, but only upon and subject to all the terms and conditions of this Agreement.

The Railroad represents, warrants and agrees that all of the Equipment is to be used or is intended for use in connection with interstate commerce.

ARTICLE 12. Prohibition Against Liens. The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or in the Equipment, or any unit thereof, equal or superior to the Vendor's title or interests therein; provided, however, that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges

or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. Railroad's Indemnities. The Railroad agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees arising out of retention by the Vendor of title to and a security interest in the Equipment, the use and operation thereof by the Railroad during the period when said title and security interest remains in the Vendor or the transfer of said title and security interest in the Equipment by the Vendor pursuant to any of the provisions of this Agreement. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 14. Patent Indemnities; Builder's Warranty of Material and Workmanship. Except in cases of articles or materials specified by the Railroad and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Railroad and any assignee of this Agreement from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad or such assignee, its assigns or the users of the Equipment because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Railroad and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to

be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every claim, right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Railroad and purchased or otherwise acquired by the Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. The Builder further agrees to execute and deliver to the Railroad or the users of the Equipment all and every such further assurance as may be reasonably requested by the Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action. The Builder will give notice to the Railroad of any claim known to the Builder from which liability may be charged against the Railroad hereunder and the Railroad will give notice to the Builder of any claim known to the Railroad from which liability may be charged against the Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

The Builder's warranty of material and workmanship is set forth in Item 2 of Schedule A hereto.

ARTICLE 15. Assignments. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. A sale, assignment, transfer or disposition to a railroad company organized under the laws of the United States of America or any of the states thereof which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each of, and all, the obligations and covenants of the Railroad under this Agreement and the Finance Agreement described in Item 4 of Schedule A hereto, shall not be deemed a breach of this covenant, provided (1) such railroad company shall have net tangible assets and capital and surplus aggregating at least that of the

Railroad immediately prior to such acquisition and (2) no default shall at the time have occurred and be continuing under this Agreement and, after giving effect to such sale, assignment, transfer or disposition, such successor shall not be in default under any provision of this Agreement.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance with this Agreement or to respond to its warranties and indemnities contained or referred to in Article 14 hereof, or relieve the Railroad of any of its obligations to the Builder under Articles 2, 3, 4, 5, 13 and 14 hereof, Schedule A hereto and this Article 15 or of any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Railroad recognizes that it is the custom of railroad equipment manufacturers to assign conditional sale agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder and for the purposes of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part

thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the Builder.

ARTICLE 16. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment or any other sum payable by the Railroad as provided in this Agreement within five days after payment thereof shall be due hereunder; or

(b) the Railroad shall fail or refuse to comply with the covenants and agreements contained in the third paragraph of Article 9 hereof or the Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment on its part to be kept or performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Railroad and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner

that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) any other proceedings shall be commenced by or against the Railroad for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Railroad or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) the Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment; or

(f) an event of default shall have occurred under the Other Agreement;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a Declaration of Default) the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further

demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated. The Railroad shall promptly notify the Vendor of any event which has come to its attention which constitutes, or which with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Rail-

roads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause (a) the Equipment to be moved to such point or points on its lines as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (b) the Equipment to be moved to such interchange point or points of the Railroad as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad and, at the Railroad's risk, to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; provided, however, that if the Railroad, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total

unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing and storing the Equipment and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendor or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 21 hereof. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Railroad hereunder. The Railroad shall pay to the Vendor the per diem interchange for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser at such sale.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein. The Vendor and the Railroad agree that the Vendor shall be entitled to all rights provided for in § 77(j) of the Bankruptcy Act or any comparable provision of any amendment thereto, or of any other bankruptcy act, so that the Vendor shall have the right to take possession

of the Equipment upon an event of default under this Agreement regardless of whether or not the Railroad is in reorganization.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment by the Railroad at the rate per annum set forth in Article 4 hereof, applicable to amounts remaining unpaid after becoming due and payable. If the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

ARTICLE 18. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable Federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 19. Recording. The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20. Payment of Expenses. Regardless of whether the transactions contemplated hereunder are consummated, the Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builder) incident to this Agreement and the first and second assignments of this Agreement (including the fees and expenses of an agent, if any such assignee is an agent), and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the first and second assignee of this Agreement and for any party acquiring interests in such first or second assignment, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first or second assignment.

ARTICLE 21. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Railroad, at R. D. No. 2, Middle Street, Brookville, Pennsylvania 15825.

(b) to the Builder, at its address specified in Item 1 of Schedule A hereto, and

(c) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to each of the other parties hereto by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 22. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedules hereto, exclusively states the rights of the Vendor and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor and the Railroad.

ARTICLE 23. Law Governing. The Railroad warrants that its chief place of business and its chief executive offices are located in the state specified in clause (a) of Article 21 hereof. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of such state; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

The parties hereto do further agree as follows:

1. The amendment and restatement of the Original Conditional Sale Agreement hereabove provided shall be effective only upon consummation of the closing under the Supplemental Assignment on the Closing Date (as defined in the Supplemental Assignment).

2. The Railroad expressly represents that the rights of the Agent to receive payment for the entire unpaid Conditional Sale Indebtedness (and interest thereon) shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any indebtedness or liability at any time owing to the Railroad by Mellon or by United States Trust Company of New York, in its individual capacity and not as Agent. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against Mellon or United States Trust Company of New York, in its individual capacity and

not as Agent, as the case may be.

3. Except as amended and restated hereby, the Original Conditional Sale Agreement shall remain in full force and effect.

4. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

THE PITTSBURG & SHAWMUT RAILROAD
COMPANY,

by


Vice President

[Corporate Seal]

Attest:


Secretary

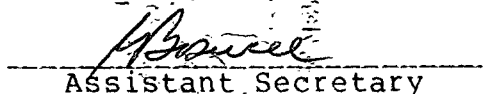
UNITED STATES TRUST COMPANY OF
NEW YORK, as Agent,

by


Assistant Vice President

[Corporate Seal]

Attest:


Assistant Secretary

ACKNOWLEDGMENT AND CONSENT

The undersigned hereby consents and agrees to the amendment and restatement of the Article of Agreement dated as of March 1, 1976, between the undersigned and The Pittsburgh & Shawmut Railroad Company, as set forth in the foregoing Agreement dated as of February 1, 1977, between United States Trust Company of New York, as Agent and said Railroad, provided, however, that the rights, obligations, warranties and indemnities of the undersigned under said Article of Agreement and all assignments thereof shall not be affected thereby.

BETHLEHEM STEEL CORPORATION,

by

A. M. Reed

Vice President

[Corporate Seal]

Attest:

R. J. Masters

Assistant Secretary



Dated as of February 1, 1977

COMMONWEALTH OF PENNSYLVANIA,)
 ARMSTRONG) ss.:
COUNTY OF ~~ALLEGHENY~~,)

On this 17th day of MARCH 1977, before me personally appeared W. R. WEAVER, to me personally known, who, being by me duly sworn, says that he is a ~~Vice~~ President of THE PITTSBURG & SHAWMUT RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Rose Marie Montgomery
Notary Public

[Notarial Seal]


My Commission expires

NOTARY PUBLIC
Kitt's, Armstrong County
My Commission Expires May 13, 1980



STATE OF NEW YORK,)
) ss.:
COUNTY OF NEW YORK,)

On this 11 day of MARCH 1977, before me personally appeared IRENE R SCOCCA, to me personally known, who, being by me duly sworn, says that she is an Assistant Vice President of UNITED STATES TRUST COMPANY OF NEW YORK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its By-laws and she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Notary Public

[Notarial Seal]

My Commission expires

March 30, 1978

CHRISTINE C. COLLINS
Notary Public, State of New York
No. 31-4624735
Qualified in New York County
Certificate filed in New York County
Commission Expires March 30, 1978

SCHEDULE A

- Item 1: Bethlehem Steel Corporation, a Delaware corporation, Bethlehem, Pennsylvania 18016.
- Item 2: The Builder warrants that its Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants that the Equipment will comply on the date of its delivery with the Rules of Interchange of the Association of American Railroads and with all applicable governmental regulations and requirements. The Builder warrants that the Equipment will be free from defects in material, design, construction and workmanship under normal use and service, except as to any article, material or design which is specified by the Railroad and not manufactured by the Builder or which is furnished or supplied by the Railroad, and except as to used materials or components specified by the Railroad or included in the Specifications. The Builder's obligation under this paragraph with respect to any unit of Equipment shall be limited to repairing or replacing at its manufacturing plant at Johnstown, Pennsylvania, any part or parts of any such unit of Equipment, which shall, within one year after delivery of such unit of Equipment, be returned to Johnstown with transportation charges prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus defective. The Builder shall not be liable for indirect or consequential damage resulting from defects in material, design, construction or workmanship. BETHLEHEM STEEL CORPORATION'S WARRANTY SET FORTH IN THIS PARAGRAPH IS EXCLUSIVE AND EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES BY BETHLEHEM STEEL CORPORATION WHETHER WRITTEN, ORAL OR IMPLIED, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF BETHLEHEM STEEL CORPORATION. Such warranty shall survive the delivery to and acceptance of the Equipment by the Railroad.
- Item 3: The Conditional Sale Agreement dated as of February 1, 1977, between the Builder and the Railroad.
- Item 4: The Finance Agreement dated as of February 1, 1977 among the Railroad, the Agent, and the Parties named in Schedule A thereto.

SCHEDULE B

<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Quantity</u>	<u>Unit Base Price</u>	<u>Total Purchase Price</u>	<u>Road Numbers (Inclusive)</u>
100-Ton Triple Hopper Cars	HT	100	\$27,900	\$2,790,000	200-299

United States Trust Company
of New York
130 John Street
New York, N. Y. 10038

The undersigned, as a holder of a note, loan or indebtedness of The Pittsburgh & Shawmut Railroad Company (the Railroad) of the character and in the amount(s) more specifically described in Annex A hereto (said note, loan or indebtedness, together with all refundings thereof being hereinafter called the Indebtedness) hereby agrees to subordinate, and the undersigned does hereby subordinate the payment of all the principal of or interest on the Indebtedness to the prior payment in full of the principal of and interest on the Conditional Sale Indebtedness (as that term is defined in the Conditional Sale Agreement dated as of February 1, 1977, between the Railroad and Bethlehem Steel Corporation and the Amended and Restated Conditional Sale Agreement dated as of February 1, 1977, between the Railroad and United States Trust Company of New York, as Agent, said conditional sale agreements, copies of which have been delivered to the undersigned being hereinafter collectively called the Conditional Sale Agreements); provided, however, that prior to any event of default or the occurrence of any event with which the giving of notice and/or the passage of time, or both, could constitute an event of default under the Conditional Sale Agreements, the Railroad may make such payments on account of the principal of or

2

interest on the Indebtedness as may be permitted under Article 9 of the Conditional Sale Agreements (hereinafter called Permitted Payments), and the undersigned shall be entitled to retain such Permitted Payments.

The undersigned further agrees not to ask, demand, sue for, take or receive all or any part of the Indebtedness or any interest thereon, other than Permitted Payments, unless and until the Conditional Sale Indebtedness and all interest thereon shall have been fully paid and discharged.

The undersigned hereby further agrees that upon any distribution of the assets or readjustment of indebtedness of the Railroad, whether by reason of reorganization, liquidation, dissolution, bankruptcy, receivership, assignment for the benefit of creditors, or any other action or proceeding involving the readjustment of all or any of the Indebtedness, or the application of assets of the Railroad to the payment or liquidation thereof, either in whole or in part, you shall be entitled to receive payment in full of the entire principal of and interest on the Conditional Sale Indebtedness prior to the payment of all or any part of the Indebtedness, and in order to enable you to assert and enforce your rights hereunder in any such action or proceeding, or upon the happening of any such event, you are hereby irrevocably authorized and empowered, in your discretion, to

1

make and present, for and on behalf of the undersigned, such proofs or claims against the Railroad on account of the Indebtedness as you may deem advisable, and to receive and collect any and all dividends or other payments or disbursements made thereon, and to apply the same on account of the principal of and/or interest on the Conditional Sale Indebtedness, as you may elect; and the undersigned further agrees to execute and deliver to you such assignments or other instruments as may be reasonably required by you in order to enable you to enforce any and all such claims and to collect any and all dividends or other payments or disbursements which may be made at any time on account of all or any of the Indebtedness to the extent necessary to effectuate the foregoing.

It is understood and further agreed that you may at any time in your discretion renew or extend the time of payment of the Conditional Sale Indebtedness, waive compliance with any provisions of the Conditional Sale Agreements, enforce or not enforce any of your rights and remedies thereunder, and take any and all action under the Conditional Sale Agreements, and in reference thereto make and enter into such agreements, amendments or supplements as you may deem proper or desirable, without notice to or further assent by the undersigned, or without in any manner impairing or affecting this Agreement or any of your rights hereunder.

This Agreement shall be deemed to be made under and shall be governed by the laws of the State of New York in all respects, including matters of construction, validity and performance, and it is understood and agreed that none of its terms or provisions may be waived, altered, modified or amended except in writing duly signed for and on your behalf.

Very truly yours,

by

Vice President

ATTEST:

Secretary